

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,  
PLATINUM MOTORS, INC.,  
MATTINGLY AUTO SALES, INC.,  
YOUNG EXECUTIVE MANAGEMENT &  
CONSULTING SERVICES, INC.,  
Individually, and on behalf  
of other members of the  
general public similarly  
situated,

Plaintiffs,

Docket No.

1:14-cv-01589-TWP-DKL

vs.

COX ENTERPRISES, INC.,  
COX AUTOMOTIVE, INC.,  
NEXTGEAR CAPITAL, INC. f/k/a  
DEALER SERVICES CORPORATION,  
successor by merger with  
Manheim Automotive Financial  
Services, Inc., and JOHN WICK,  
Defendants.

Class Action

The deposition upon oral examination of  
**ADAM GALEMA**, a witness produced and sworn before me,  
Paula A. Morgan, Notary Public in and for the County  
of Hamilton, State of Indiana, taken on the 10th day  
of November, 2016, in the offices of Bose, McKinney &  
Evans, 111 Monument Circle, Suite 2700, Indianapolis,  
Marion County, Indiana, pursuant to the Federal Rules  
of Civil Procedure. This deposition was taken on  
behalf of the Plaintiffs in the above-captioned  
matter.

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**EXHIBIT**  
**"A"**

1 A Yeah. No, just on an individual basis, like what  
2 would be an appropriate amount to incentivize  
3 someone.

4 Q And you do that for all the sales representatives?

5 A Yeah. Every incentive plan runs through finance.

6 Q Do you have any input in what the goals are that a  
7 salesperson needs to reach in order to earn a bonus?

8 A No, I do not. Those are set by their -- the  
9 operational folks.

10 Q Do you have any input in the metrics that may be used  
11 to determine a particular goal or particular amount  
12 of money that an individual sales representative  
13 would get?

14 A Sure. My team is responsible for calculating the  
15 incentive, so we use the data that comes out of our  
16 system and calculate the incentive from that.

17 Q What data would you use?

18 A During that time frame? During this time frame here?  
19 I can't recall exactly what would have been part of  
20 the incentive plans. You know, guessing, it probably  
21 would have been something revolving around  
22 activations and -- you know, dealer activations and  
23 new loan count.

24 Q And have those metrics changed over time?

25 A Sure.

1 Q What changes were made?

2 A They change every year. So I couldn't tell you  
3 exactly each year what changes, but different metrics  
4 are used each year.

5 Q Is it generally based on the dealer activation and  
6 maybe default rate as well, too? Would those be  
7 terms that were normally included?

8 A Sure. Potentially, yeah. It's generally based  
9 around the activity that account executive manages  
10 and that their portfolio generates.

11 Q With the merger purchase by Cox, did you have any  
12 role in negotiating that merger?

13 A No, I did not.

14 Q Did you have any role in the integration of MAFS with  
15 NextGear?

16 A Yes.

17 Q What did you do with that?

18 A Just assisted with the combination of financial  
19 statements, the combination of the securitization  
20 facilities for both companies. Just, you know, a  
21 whole litany of those things. Those are the main  
22 overarching themes there.

23 Q You would have been in charge of integrating any  
24 salesperson training, anything like that, with --

25 A No, I do not train the salespeople.

1 Q How about the contracts that the salespeople would  
2 have used? Did you have any role in the integration  
3 of those contracts between MAFS and DSC?

4 A No. That was handled through our legal team.

5 Q Before, you stated that there was a mutual benefit  
6 between the auto auction agency and NextGear. Could  
7 you explain what you mean by "mutual benefit"?

8 A Sure. So we provide information to them, you know,  
9 such as a defaulted dealer, that they can -- you  
10 know, they choose to do with it what they want. I  
11 mean, they can, you know, enter that dealer into the  
12 KO book, if they choose.

13 We also receive data back from them of the  
14 dealers that are listed in the KO book, and that  
15 information is used to make credit decisions at  
16 NextGear.

17 Q With the reporting that you do now on a monthly  
18 basis, are you receiving reports from the people that  
19 you supervise and then putting them into a different  
20 form to give to the persons you report to?

21 A Which reports?

22 Q Like a monthly report. Would you have a profit and  
23 loss statement?

24 A Financial statements? Those are -- financial  
25 statements are generated out of our accounting

1 software, so there's no manipulation, if you will, of  
2 those.

3 Q I assume you're familiar with the term "float"?

4 A Yes.

5 Q And in this case the delay between the time that  
6 NextGear or DSC would fund an auction for a car  
7 versus the time that the dealer's being charged  
8 interest would be the float, correct?

9 A No, I would not call it a float.

10 Q What would you call that?

11 A I would call that the period between the floorplan  
12 date and the date that the auction was funded.

13 Q And during that time frame DSC or NextGear hadn't  
14 actually sent any money to the auction at all,  
15 correct?

16 MR. VINK: Object to the form. You can answer.

17 A Can you rephrase that?

18 Q From the time that the dealer purchased the vehicle  
19 from an auction and NextGear sends the money to that  
20 auction, there's a delay period in some instances,  
21 correct?

22 A In some instances, yes, there can be a delay.

23 Q Does NextGear keep track of the time between the day  
24 that a transaction is funded versus the day that it  
25 was first requested?

1 A The information resides in the system. It is not a  
2 metric or a data point that we review frequently.

3 Q But you do review that sometimes, correct?

4 A I've seen data around it, yeah.

5 Q What was the purpose for that data?

6 A Just to investigate, make sure that vehicle was still  
7 a valid floorplan.

8 Q So the system could generate that information for  
9 each transaction, correct?

10 A Yeah, those data points reside in the system for  
11 every transaction. And those are the same data  
12 points shown on this report.

13 Q Let's make it easier. Let's walk through one of the  
14 transactions here. If we go to page NGR000012, which  
15 is page 2 of Exhibit B that was attached to your  
16 affidavit, if we go to the column starting underneath  
17 where it says "Total for - 8/17/2011," it's stock  
18 number 13. It says "2000 Saturn S-Series SL2." Walk  
19 me through that transaction.

20 A Sure. I mean, based on the facts here, dealer would  
21 have purchased the vehicle at Oak View Auto Auction  
22 on August 5, 2011. That auction would have  
23 transmitted that flooring information to DSC at the  
24 time, on the same date, August 5, 2011, and -- you  
25 know, under the terms there noted to the right. And

1           then that third date there is completed date,  
2           August 17, 2011.

3           Based on that information there, you know, it's  
4           easy to reason that we had an agreement with the  
5           auction to fund that vehicle either on notice of  
6           title or on possession of title. And that's why  
7           the -- sorry. Let me get my dates right. It's the  
8           one underneath it. So, yeah, that's why on the 18th  
9           of August the funding occurred.

10          Q    When you say "the funding occurred," that's the day  
11               that NextGear sent funds to Oak View Auction in this  
12               case?

13          A    That's correct.

14          Q    But you're not familiar with the terms or contents of  
15               the Oak View Auction agreement between NextGear  
16               and -- in this case it was DSC and -- well, between  
17               Oak View Auction and DSC?

18          A    I don't have that document in front of me, no. I can  
19               make a reasonable --

20          Q    If we go to NGR000014 -- it's page 4 -- toward the  
21               bottom of the page it's stock number 58. It's a 1997  
22               Ford Explorer.

23          A    Yes.

24          Q    Can you walk me through that transaction as well?

25          A    Sure. Dealer would have purchased that vehicle at

1 Oak View Auto Auction on August 26, 2011. That  
2 auction would have sent that information to DSC on  
3 the same date, August 26. And that dealer -- the  
4 dealer, ultimately, paid that vehicle off, completed  
5 it on September 12, 2011. And, again, same thing.  
6 They would have -- the auction received -- or we sent  
7 funding to the auction on October 7, 2011.

8 Q And that August 26 date, the flooring date, that's  
9 the day that DSC would have been charging, started  
10 charging, Red Barn Motors interest?

11 A Yes, that's correct. That's the day they started  
12 utilizing their floorplan for that vehicle.

13 Q Now, this document, which is Exhibit B that was  
14 created for this litigation, is this something also  
15 that a dealer would be able to create?

16 A This exact form? No. This is created specifically  
17 for this case. The dealer does have access to  
18 reporting that's very similar, that has all the same  
19 information on it.

20 Q It would have the "Total for" date on it?

21 A I believe it would, yes.

22 Q Is there any indication on here of what "Total for"  
23 means?

24 A On this report it does not specifically say, but we  
25 understand that to be the case, that it's the total



1 amount funded on that particular day. I believe the  
2 reporting available to the dealer is a little more  
3 descriptive.

4 Q Have you seen more descriptive reporting that's  
5 available to the dealer than this?

6 A To the extent that this -- this report has a lot of  
7 information on it. Again, I can't say exactly if  
8 every single column on here is on the report that  
9 they see, but, you know, to my -- yeah, I would say  
10 that all those are -- in one form or another, all  
11 that information is on the reporting, the Receivable  
12 Detail Report that the dealer has access to.

13 MR. AIREY: I don't have additional copies of  
14 this. This was an exhibit that we used yesterday,  
15 Exhibit 17.

16 MR. VINK: Okay.

17 Q You stated that dealers can get the Receivable Detail  
18 Report. Is this one of the reports that you were  
19 discussing?

20 A This is a Receivable Detail Report, yes.

21 Q Okay. That's something that the dealer would have?

22 A Yes.

23 Q Get? Okay. Can you show me where the "Total for"  
24 column is on that?

25 A On this report there's not a "Total for" amount.